

**Editor's note: appealed - FLPMA sec. 314(c) declared unconstitutional, Civ.No. R 82-297 BRT (D. Nev. Oct. 21, 1983), 573 F.Supp. 472; reversed and remanded, S.Ct. No. 83-1394 (April 1, 1985); 471 US 84; stipulated settlement (D.Nev. July 25, 1985)**

MADISON D. LOCKE ET AL.

IBLA 81-631

81-632      Decided June 25, 1982

Appeals from decisions of the Nevada State Office, Bureau of Land Management, declaring mining claims abandoned and void. N MC-121456 through N MC 121459 and N MC 121460 through N MC 121466.

Affirmed in part, dismissed in part.

1. Appeals -- Rules of Practice: Appeals: Dismissal -- Rules of Practice: Appeals: Timely Filing

Notice of appeal must be filed within 30 days after the person taking the appeal is served with the decision from which the appeal is taken. The timely filing of a notice of appeal is jurisdictional and failure to file the appeal within the time allowed requires dismissal of the appeal.

2. Federal Land Policy and Management Act of 1976: Recordation of Mining Claims and Abandonment -- Mining Claims: Abandonment

The failure to file the instruments required by sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), and 43 CFR 3833.1 and 3833.2 in the proper Bureau of Land Management office within the time periods prescribed therein conclusively constitutes abandonment of the mining claim by the owner.

3. Estoppel -- Federal Employees and Officers: Authority to Bind Government

Reliance on erroneous information provided by a Bureau of Land Management employee cannot relieve the owner of an unpatented mining claim of an obligation imposed by

statute, or create rights not authorized by law, or relieve the claimant of the consequences imposed by the statute for failure to comply with its requirements.

4. Administrative Authority: Generally -- Constitutional Law: Generally -- Statutes

The Department of the Interior, as an agency of the executive branch of the Government, is not the proper forum to decide whether or not the Federal Land Policy and Management Act of 1976 is constitutional.

5. Administrative Procedure: Hearings -- Constitutional Law: Due Process -- Rules of Practice: Hearings

Due process does not require notice and a right to a prior hearing in every case where an individual may be deprived of property so long as the individual is given notice and an opportunity to be heard before the deprivation becomes final.

APPEARANCES: Harold A. Swafford, Esq., Reno, Nevada, for appellants.

#### OPINION BY ADMINISTRATIVE JUDGE LEWIS

On May 1, 1981, appellants herein filed a notice of appeal from four decisions of the Nevada State Office, Bureau of Land Management (BLM), dated April 4, 1981, which declared mining claims (N MC 121456 through N MC 121459 and N MC 121460 through N MC 121466) invalid for failure to file a notice of intent to hold the claims or proof of assessment work as required by section 314 of the Federal Land Policy and Management Act of 1976 (FLPMA), 43 U.S.C. § 1744 (1976), and 43 CFR 3833.2. The claims were located in 1952 and 1955, and recorded with BLM on October 19, 1979.

The notice of appeal also states that two previous decisions, one dated July 10 and one dated September 12, 1980, are being appealed. As appellants' statement of reasons addresses the substance of these earlier decisions we will respond to this matter at the outset.

[1] The concluding paragraph of each of the earlier decisions advises the parties affected thereby of their right of appeal, of the governing regulations, and of the time limits which must be met to avoid summary dismissal of an appeal. These regulations require that a notice of appeal must be filed within 30 days after the person taking the appeal is served with the decision from which the appeal is taken. 43 CFR 4.411(a). These provisions are mandatory inasmuch as they deter-

mine the jurisdiction of the Board to hear an appeal, and are not subject to waiver. Appellants' notice of appeal as to BLM's July and September decisions is untimely. Therefore, as to those decisions, the appeal cannot be considered and must be dismissed. DNA -- People's Legal Services, 49 IBLA 307 (1980); Ilean Landis, 49 IBLA 59 (1980).

As to the April 1981 decisions, the appeal is timely, and the Board has jurisdiction thereof. All of the claims involved were located before October 21, 1976. No notice of intent to hold the claims or proof of assessment work was filed with BLM by December 30, 1980, the date by which appellants were required to file such documents. On August 21 and September 8, 1981, appellants' supplemented the record herein by filing certain photographs and an affidavit of Rosalie E. Locke attesting to production between 1960 and 1980 on the claims at issue.

In their statement of reasons appellants contend that on December 31, 1980, they filed affidavits of assessment work for all of the claims. Appellants say they were erroneously advised by unnamed BLM personnel as to the proper filing date. They further contend that the applicable provision of FLPMA and regulations are unconstitutional and invalid, respectively, having resulted in a taking of appellants' property without notice and opportunity to be heard. Appellants have requested an evidentiary hearing before an Administrative Law Judge in connection with their appeal.

[2] The pertinent regulation, 43 CFR 3833.2-1(a) provides:

The owner of an unpatented mining claim located on Federal lands on or before October 21, 1976, shall file in the proper BLM office on or before October 22, 1979, or on or before December 30 of each calendar year following the calendar year of such recording, whichever date is sooner, evidence of annual assessment work performed during the preceding assessment year or a notice of intention to hold the mining claim.

Failure to file the necessary instruments within the time period prescribed conclusively constitutes abandonment of the claim or claims. 43 CFR 3833.4. This Board has no authority to excuse lack of compliance with these requirements or to afford relief from statutory consequences. Betty L. Henry, 55 IBLA 47 (1981). Lynn Keith, 53 IBLA 192, 88 I.D. 369 (1981). Nor do the additional documents filed by appellants after the BLM decision herein change our finding that appellants failed to file timely the required notice of intent to hold the claims or proof of assessment work.

[3] As to the argument that BLM misled appellant as to when the proof of assessment work should be filed, the Board has repeatedly held that the public may not rely on erroneous information given out by an employee of the Department. Reliance on erroneous information provided by a BLM employee cannot relieve the owner of an unpatented mining claim

of an obligation imposed by statute or regulation, or create rights not authorized by law, or relieve the claimant of the consequences imposed by statute for failure to comply with its requirements. John Plutt, Jr., 53 IBLA 313 (1981), and cases cited therein.

[4] Appellants' argument that the recordation requirements are unconstitutional may not be considered by this Board. The Department of the Interior as an agency of the executive branch of the Federal Government is not a proper forum to consider the constitutionality of the recordation provisions of FLPMA, supra. Alice E. Deetz, 48 IBLA 59 (1980). In addition, regulations promulgated pursuant to these provisions have been upheld. Topaz Beryllium Co. v. United States, 479 F. Supp. 309 (D. Utah 1979), aff'd, 649 F.2d 775 (10th Cir. 1981).

[5] Due process does not require notice and a right to a prior hearing in every case where a person is deprived of an asserted property right so long as the individual is given notice and an opportunity to be heard before the initial BLM decision, adverse to him, becomes final. Appeal to this Board satisfies the due process requirements. George H. Fennimore, 50 IBLA 280 (1980); Dorothy Smith, 44 IBLA 25 (1979); H. B. Webb, 34 IBLA 362 (1978). Moreover, a hearing is not required in the absence of assertions of facts which, if proved true, would entitle appellant to the relief sought.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decisions of April 4, 1981, are affirmed, and the appeal is dismissed insofar as it addresses the decisions of July and September 1980.

Anne Poindexter Lewis  
Administrative Judge

We concur:

Bruce R. Harris  
Administrative Judge

Edward W. Stuebing  
Administrative Judge

